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DEPARTMENT OF COMMERCE

International Trade Administration

[C-542-801]

Certain New Pneumatic Off-The-Road Tires from Sri Lanka: Notice of Court Decision Not in Harmony With Final Affirmative Countervailing Duty Determination, Notice of Amended Final Determination and Revocation of Countervailing Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On July 11, 2018, the United States Court of International Trade (CIT) entered its final judgment sustaining the final results of remand redetermination pursuant to court order by the Department of Commerce (Commerce) pertaining to the countervailing duty (CVD) investigation of certain new pneumatic off-the-road tires (off road tires) from Sri Lanka. Commerce is notifying the public that the final judgment in this case is not in harmony with Commerce's final determination in the CVD investigation of off road tires from Sri Lanka. Pursuant to the CIT's final judgment, the mandatory respondent in the CVD investigation of off road tires from Sri Lanka received a net countervailable subsidy rate of 1.23 percent, a rate that is *de minimis* and, therefore, Commerce is hereby revoking this order.

DATES: Applicable July 21, 2018.

FOR FURTHER INFORMATION CONTACT: Whitley Herndon, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-6274.

SUPPLEMENTARY INFORMATION:

Background

On January 10, 2017, Commerce published the *Final Determination* in this proceeding.¹ Commerce reached an affirmative determination that countervailable subsidies were provided to mandatory respondent Camso Loadstar (Private), Ltd. (Camso Loadstar). Commerce published the countervailing duty order resulting from the investigation on March 6, 2017.²

Camso Loadstar and the Government of Sri Lanka (GOSL) appealed the *Final Determination* and countervailing duty order to the CIT, and on April 17, 2018, the CIT remanded the *Final Determination*.³ Specifically, the CIT remanded the *Final Determination* directing Commerce to eliminate any duties attributable to the Guaranteed Price Scheme for Rubber (GPS) program based on mere reimbursement for excessive rubber payments.⁴

On June 13, 2016, Commerce issued its final results of redetermination pursuant to remand in accordance with the CIT's order.⁵ On remand, Commerce, under respectful protest,⁶ eliminated any duties attributable to the GPS program and recalculated the countervailable subsidy rate for Camso Loadstar accordingly. On July 11, 2018, the CIT sustained Commerce's *Final Redetermination*.⁷ Thus, the effective date of this notice is July 21, 2018.

¹ See *Certain New Pneumatic Off-the-Road Tires from Sri Lanka: Final Affirmative Countervailing Duty Determination, and Final Determination of Critical Circumstances*, 82 FR 2949, 2950 (January 10, 2017) (*Final Determination*) and accompanying Issues and Decision Memorandum.

² See *Certain New Pneumatic Off-the-Road Tires from India and Sri Lanka: Amended Final Affirmative Countervailing Duty Determination for India and Countervailing Duty Orders*, 82 FR 12556 (Mar. 6, 2017) (*Order*).

³ See *Government of Sri Lanka v. United States*, Slip Op. 18-43 (CIT Apr. 17, 2018)

⁴ *Id.* at 20.

⁵ See Final Results of Redetermination on Remand Pursuant to *Government of Sri Lanka v. United States*, Slip Op. 18-43 (CIT April 17, 2018), dated June 13, 2016 (*Final Redetermination*). See also <https://enforcement.trade.gov/remands/18-43.pdf>.

⁶ See *Viraj Group, Ltd. v. United States*, 343 F.3d 1371 (Fed. Cir. 2003).

⁷ See *Government of Sri Lanka v. United States*, Slip Op. 18-87, Consol. Court No. 17-00059 (CIT July 11, 2018) (*Final Remand Order*).

Timken Notice

In its decision in *Timken*,⁸ as clarified by *Diamond Sawblades*,⁹ the Court of Appeals for the Federal Circuit (Federal Circuit) held that, pursuant to section 516A of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of court decision that is not “in harmony” with a Commerce determination and must suspend liquidation of entries pending a “conclusive” court decision.¹⁰ The CIT’s July 11, 2018, final judgment sustaining the *Final Redetermination* constitutes a final decision of that court that is not in harmony with Commerce’s *Final Determination*. Thus, this notice is published in fulfillment of the publication requirements of *Timken* and section 516A of the Act.

Amended Final Determination

Because there is now a final court decision, Commerce is amending the *Final Determination* with respect to Camso Loadstar. The revised countervailable subsidy rate for Camso Loadstar for the period January 1, 2015, through December 31, 2015, is as follows:

Exporter or Producer	Subsidy Rate (Percent)
Camso Loadstar (Private), Ltd.	1.23 (<i>de minimis</i>)

Revocation of the Order

Pursuant to section 705(a)(3) of the Act, Commerce “shall disregard any countervailable subsidy that is de minimis as defined in section 703(b)(4)” of the Act. Furthermore, and pursuant to section 705(c)(2) of the Act, “the investigation shall be terminated upon publication of that negative determination” and Commerce shall “terminate the suspension of liquidation” and

⁸ See *Timken Co. v. United States*, 893 F.2d. 337 (Fed. Cir. 1990) (*Timken*).

⁹ See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d. 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

¹⁰ See Sections 516A(c) and (e) of the Act.

“release any bond or other security, and refund any cash deposit.” As a result of the CIT’s decision affirming Commerce’s *Final Redetermination*, Commerce is revoking the countervailing duty order on off road tires from Sri Lanka¹¹ because the revised CVD margin for Camso Loadstar, the only mandatory respondent, is now *de minimis*.¹² Because the revised net countervailable subsidy rate for the sole mandatory respondent, Camso Loadstar, is *de minimis*, Commerce did not determine an all-others rate in the *Final Redetermination*. Accordingly, Commerce intends to issue instructions to U.S. Customs and Border Protection (CBP) to release any bonds or other security and refund cash deposits pertaining to any suspended entries pursuant to the *Order*. As a result of this revocation, Commerce will not initiate administrative reviews of this *Order*.¹³

Although section 705(c)(2)(A) of the Act instructs Commerce to terminate suspension of liquidation, we note that, pursuant to *Timken*, the suspension of liquidation must continue during the pendency of the appeals process. Thus, we will continue to instruct CBP at this time to (A) release any bond or other security, and refund any cash deposit made pursuant to the *Order* as discussed above; and (B) suspend liquidation of all unliquidated entries of subject merchandise from Sri Lanka at a cash deposit rate of 0.00 percent which are entered, or withdrawn from warehouse, for consumption on or after July 21, 2018, which is ten days after the court’s decision, in accordance with section 516A of the Act.¹⁴ In the event that the CIT’s judgment

¹¹ See *Order*, 82 FR at 12556.

¹² See section 703(b)(4)(B) of the Act; *Developing and Least-Developed Country Designations under the Countervailing Duty Law*, 63 FR 29945 (June 2, 1998).

¹³ Commerce did not previously initiate any administrative review of the *Order*.

¹⁴ See, e.g., *Drill Pipe from the People’s Republic of China: Notice of Court Decision Not in Harmony with International Trade Commission’s Injury Determination, Revocation of Antidumping and Countervailing Duty Orders Pursuant to Court Decision, and Discontinuation of Countervailing Duty Administrative Review*, 79 FR 78037, 78038 (December 29, 2014); *High Pressure Steel Cylinders From the People’s Republic of China: Notice of Court Decision Not in Harmony With Final Determination in Less Than Fair Value Investigation, Notice of Amended Final Determination Pursuant to Court Decision, Notice of Revocation of Antidumping Duty Order in Part, and Discontinuation of Fifth Antidumping Duty Administrative Review*, 82 FR 46758, 46760 (October 6,

affirming the *Final Redetermination* is not appealed, or appealed and upheld by the U.S. Court of Appeals for the Federal Circuit, Commerce will instruct CBP to terminate the suspension of liquidation and to liquidate those entries of subject merchandise without regard to countervailing duties. Notwithstanding the continued suspension described above, the countervailing duty order on off road tires from Sri Lanka is hereby revoked, as described above.

Lastly, we note that, at this time, Commerce remains enjoined by Court order from liquidating entries that were produced and/or exported by Camso Loadstar, and were entered, or withdrawn from warehouse, for consumption during the period June 20, 2016, through October 17, 2016, and from February 28, 2017, through December 31, 2017. These entries will remain enjoined pursuant to the terms of the injunction during the pendency of any appeals process.

Notification to Interested Parties

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of the APO is a violation subject to sanction.

This notice is issued and published in accordance with section 516A(c)(1) and (e) of the Act.

Dated: July 19, 2018.

Gary Taverman,

Deputy Assistant Secretary

*for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance.*

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